IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.762 OF 1988

Harischandra Sadu Shilavat ...Appellant

Vs.

The State of Maharashtra ...Respondent

Mr.R.J.Mane for the Appellant.
Mr.I.S.Thakur A.P.P.

CORAM: SMT.RANJANA DESAI &
A.S.OKA,JJ.
DATE : SEPTEMBER 20, 2004.

ORAL JUDGMENT : **(PER ABHAY S.OKA,J.)**

1. By this appeal the Appellant has taken exception to the Judgment and Order dated 8th August 1988 passed by the learned 5th Additional Sessions Judge, Nashik by which the Appellant has been convicted under Section 302 of Indian Penal Code (hereinafter referred to I.P.C.). The Appellant has been also convicted under Section 324 of I.P.C. For the offence punishable under Section 302 of I.P.C., the Appellant was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.200/- and in default one month's rigorous imprisonment. For the offence punishable under Section 324 of I.P.C., the Appellant was convicted to suffer rigorous imprisonment for six months. The learned Sessions Judge directed that the substantive sentences will run concurrently.

2. The allegation of the prosecution is that the Appellant-accused and his wife Tarabai who is accused No.2 on 30th October 1987 committed murder by intentionally or knowingly causing death of one Narayan Shilawat (hereinafter referred to as the deceased) and committed offence punishable under Section 302 read with section 34 of I.P.C. The allegation is that for committing offence the accused used 'Rapi' (i.e. an instrument used by the cobbler for cutting the leather). Further allegation is that on the same day and at the same time the accused assaulted Rupabai the mother of the deceased by rapi and by a stone and thereby committed offence under Section 324 read with Section 34 of I.P.C. In the alternative the charges were framed only against the Appellant of commission of offences punishable under Section 302 and Section 324 of I.P.C. The prosecution examined 9 witnesses. P.W.No.1 Tukaram Namdeo Pawar is the Panch Witness to the inquest Panchnama of the body of the deceased. P.W.No.2 Rupabai is the mother of the deceased who was injured in the accident. P.W.No.3 Dropadabai w/o Badhu Kore is the sister of Rupabai. P.W.No.3 is an eye witness to the incident. P.W.No.4 Ashok Namdeo Pawar was declared as hostile and was cross examined by the learned A.P.P. with the permission of the Trial Court. P.W.No.5 Sayaji Pawar is a Panch Witness to the scene of offence panchnama. P.W.No.6 Dagu Mahadu Somase is also a Panch Witness. He is the witness to the Panchnama under which the clothes on the

person of the accused No.1 were seized. He is a signatory to the arrest panchnama. He is also a panch witness to the recovery of rapi at the instance of the Appellant-accused No.1. P.W.No.7 is Dr.Subhash Nathu Sidhapure is the Medical Officer who performed the post-mortem on the body of the deceased. P.W.NO.8 Dr.Vidyadhar Chhagan Malte is the medical Practitioner who examined the deceased and declared him dead. P.W.No.9 Lalsingh Ramjitsingh Paliwal is the Investigating Officer.

3. Shri R.J.Mane learned Counsel appearing for the Appellant submitted that there were material contradictions and omissions in the testimony of P.W.No.2 Rupabai. He submitted that the evidence of P.W.No.3 Dropadabai was inconsistent with the version of P.W.No.2-Rupabai. He submitted that P.W.No.3 Dropadabai was interested witness. He pointed out that P.W.No.4 Ashok who was the only independent witness about the incident did not support the prosecution and was declared as hostile. He submitted that P.W.No.6 Dadu has not supported the prosecution on one aspect. He pointed out that P.W.No.6 who is examined as a witness to the recovery of rapi at the instance of the Appellant stated that the Appellant did not state before the police that he will produce the rapi. He also referred to the evidence of P.W.No.7 and in particular his cross examination and submitted that the injuries on the body of the deceased were not possible by using a rapi. He submitted that the case of the prosecution

was not proved beyond reasonable doubt. He submitted that P.W.Nos.2 and 3 were interested witnesses and on the basis of their evidence the order of conviction could not have been passed.

4. Shri Thakur the learned A.P.P. submitted that the offence has been proved beyond reasonable doubt as against the Appellant. He submitted that there was no reason for P.W.No.2 Rupabai to depose against the Appellant and there was no reason at all to discard her testimony. He submitted that even though P.W.No.4 turned hostile, P.W.No.3-Dropadabai has corroborated the evidence of P.W.No.2-Rupabai in all material particulars and the fact that the Appellant assaulted the deceased with rapi has been established beyond reasonable doubt. He submitted that from the nature of the injuries sustained as a result of assault made by the Appellant, it is clear that the injuries were inflicted with an intention to cause death. He has extensively referred to the evidence on record and in particular the medical evidence. He submitted that no interference is required with the impugned Judgment and order.

5. We have carefully considered rival submissions. With a view to appreciate the submissions, a reference will have to be made to the evidence on record. P.W.No.2 Rupabai is the mother of deceased Narayan. She stated that her family has a land one mile away from the village. The accused was having

a house slightly away from the house of P.W.No.2. P.W.No.2 stated that accused are cobblers by caste though they are not working as cobblers. She stated that the relations between her family and the accused were not happy due to the disputes over the land and other matters. She stated that the Appellant and her husband were real brothers. She referred to the incident of Thursday 29th October 1987 when she and her husband had gone to cut the grass. While returning in the evening accused No.2 Tarabai abused her and her children. On the next day i.e. on 30th October 1987 she was at her home along with deceased Narayan. At that time the accused started abusing them. Therefore, both of them proceeded to inform one Valmik Anna. When they were proceeding towards land of Valmik at that time the Appellant with rapi in his hand along with the accused No.2 Tarabai came in the way on the land belonging to one Balu Bhau. The Appellant stabbed Narayan on left side of the stomach, behind the ear by using rapi and he also gave a strokes of rapi on the chest of Narayan. When P.W.No.2 tried to intervene, the accused No.2 Tarabai caught hold of her hair and fell her down. The Appellant gave stroke of rapi on her right arm, forehead and nose. When P.W.No.2 and her son shouted for help, her sister Dropada and one Ashok Pawar came there. At that time accused No.2 Tarabai was holding her hair. Ashok and Dropada rescued her from accused No.2. By that time Narayan had become unconscious.

6. P.W.No.2 thereafter informed her father-in-law Sadu

Fakira. Thereupon Sadu Fakira came to the spot in one rickshaw. Her father-in-law and Dropada brought Narayan in rickshaw to the hospital at Manmad. Narayan was found dead when he was taken to a hospital at Manmad. P.W.No.2 accordingly lodged F.I.R. P.W.No.2 identified the clothes on the person of the deceased Narayan. She also identified the saree which she had worn at the time of incident. She also identified the rapi which was used by the appellant.

7. P.W.No.2 was extensively cross examined on behalf of the accused. In the cross examination P.W.No.2 stated that after she informed her father-in-law Sadu Fakira, he took Narayan to Manmad. She reached Manmad at about 10.00 or 11.00 a.m. and lodged F.I.R. and thereafter she went to the hospital and saw the dead body of Narayan. She stated that at the time of lodging the F.I.R. she was not aware whether Narayan was dead or alive. She admitted that she has not stated in F.I.R. that the incident happened in the land of Balu Bhau. She also admitted that she had not mentioned in F.I.R. that she had been to Valmik Anna along with Narayan. She also admitted that she did not state in the F.I.R. that she went back to the village to inform her father-in-law Sadu Fakira. So far as the incident of assault is concerned, even in the cross examination P.W.No.2 has stuck to her version in the examination-in-chief.

8. P.W.No.3 Dropadabai is the sister of P.W.No.2 Rupabai.

She stated that when P.W.No.2 Rupabai and Narayan were proceeding towards the house of Valimik Anna, P.W.No.3 alongwith Anusaya who was the wife of Narayan also went after P.W.No.2 and Narayan as there was an apprehension that there might be some incident. She deposed that the accused No.1 i.e. Appellant Harischandra stabbed Narayan with rapi on left side of his stomach, on the chest and behind the ear. She stated that accused No.2 Tarabai caught hold of heir of Rupabai and fell her down. P.W.No.3 stated that she ran towards P.W.No.2 Rupabai and Narayan. She also stated that Ashok also came there. She stated that the Appellant hit rapi to Rupabai on the forehead, arm and on the nose. She stated that after the incident Rupabai proceeded to inform her father-in-law Sadu Fakira who came to the spot in a rickshaw. P.W.No.3 and Sadu Fakira took Narayan in the rickshaw to the hospital at Manmad which is opposite the police station. A contradiction was sought to be brought on record on the basis of statement made by the P.W.No.3 to the police that the Appellant attacked P.W.No.2 first and later on the deceased Narayan. P.W.No.3 stated that it did not happen that Rupabai was first injured by the Appellant. She denied the suggestion that she had not seen the incident.

9. P.W.No.4 Ashok was declared as hostile. Therefore nothing turns on his evidence. P.W.No.5 is Sayaji Waman Pawar. He is a Panch Witness to the scene of offence panchnama. In the cross examination he admitted that there

were no blood stains on the land of Bala Bhau.

10. P.W.No.6 is Dadu Mahadu Somse who is also a Panch Witness. He has supported the prosecution to some extent. He is a witness to the recovery of rapi at the instance of the Appellant. He denied the suggestion that all the three panchnamas to which he was a signatory were prepared at the police station. He, however, stated that the accused No.1 did not make any statement in his presence before the police that he will produce the rapi.

11. P.W.No.7 is Dr.Subhash Nathu Sidhapure who is Medical Practitioner who performed post mortem on the body of deceased Narayan. He stated that he found following external injuries on the person of the deceased :

(1) Incised wound over left side of the infront of tragus oblique tapary down spindle shape 2" x half" skin deep.

(2) Incised wound over upper lip centre part. 1" x half inch x 1/4" tapery down.

(3) Incised wound over the right side of the supermammalary right spindle shape tapering down. 4" x half inch x half inch.

(4) Stabbed wound over the left hypocondorun in anterior axillory line oblique. 4" x 2" through which omentum protruding out spindle shape. (4"

length x 2" width).

In the examination-in-chief he was shown muddemal article rapi. He stated that injury No.4 is likely to be caused by a sharp weapon and stab wound mentioned at serial No.3 column No.17 of the post mortem report can be caused by that rapi. In the cross examination he stated that if there was no damage to kidneys and spleen then there was no question of death. The cause of death was hemorrhage shock due to rupture of spleen and kidney.

12. P.W.No.8 Vidyadhar has been examined to prove the injuries on the body of Narayan when he was brought in the hospital at Manmad. The injuries described by him are as under :

Blood stains over the clothings. A 4" long trinangular clean cut wound in the mid axillarm line 7/8/9 ribs along the deep left side (Stab).
Fal deep clean cut wound on the sternum and right 3-4 ribs. 4" - 5" long. Clean cut wounds on the face and near the left ear.

13. P.W.No.9 is Lalsingh Ramjitsingh Paliwal, Investigating Officer. He stated that F.I.R. was registered at 10.30 a.m. and on the same day between 12.05 to 12.35 both the accused were arrested. He stated that the blood stained clothes of

the accused were seized in presence of the panch witnesses. He also deposed about the recovery of rapi at the instance of accused. He proved the memorandum of recovery. Certain omissions in the evidence of P.W.No.2-Rupabai and P.W.No.3-Dropadabai were proved in the cross examination.

14. It is necessary to refer to the report of the chemical analyser. The report at Exh.37 is about the blood group of the Appellant-accused No.1. The chemical analyser has opined that the blood group of the Appellant is 'A'. The report at Exh.33 shows that articles 10 and 11 i.e. the clothes of the Appellant were having few blood stains of size 0.1 c.m to 5 c.m. in diameter on the front side. The report further discloses that the blood group of the blood on the clothes on the person of the Appellant was 'AB'. The blood group of the blood found on the clothes of the person of the deceased is also 'AB'. On the rapi which is allegedly used by the Appellant for committing crime, there are stains of human blood. However, the report of the chemical analyser discloses that the result of the test conducted for detecting blood group of the blood on rapi was inconclusive. The chemical analyser has also opined that the cuts on manila on the person of the deceased are consistent with the use of rapi which was article 9 forwarded to the chemical analyser. The report of the chemical analyser Exh.35 is regarding the blood group of the deceased. The said report discloses that the blood group was 'AB'. Thus, the blood stains of blood

group 'AB' have been found on the clothes which were seized from the body of the accused. As stated earlier, the blood group of the accused is 'A' and there is no explanation why the blood stains of blood of 'AB' group appeared on the clothes of the accused.

15. In so far as the evidence of P.W.No.2 Rupabai as regards the assault by the Appellant by using rapi on the deceased is concerned, the same is consistent with the F.I.R. She has deposed that the Appellant stabbed the deceased on left side of the stomach, behind ear and on the chest. P.W.No.3 Dropadabai has supported the P.W.No.2 on the said material aspect. In the evidence of P.W.no.2 the omissions which are brought on record are as regards failure to state that earlier the accused had come to her land and abused her and that she along with the deceased were proceeding to Valmik Anna. She admitted that while filing F.I.R. she did not mention that she went to inform her father-in-law Sadu Fakira. In so far as the assault by the Appellant on her is concerned, her evidence is consistent with the F.I.R. On that aspect there is a corroboration to her evidence by P.W.No.3 Dropadabai. The contradiction which is brought on record in evidence of P.W.no.4 is that her version in the police statement is that the Appellant attacked Rupabai first and he attacked Narayan later. Thus, there are hardly any material omissions or contradictions in the evidence of P.W.nos.2 and 3 affecting the core of the prosecution case.

16. The medical evidence also supports the version of P.W.Nos.2 and 3. The post-mortem report also shows that there were corresponding internal injuries to the injuries specified in column No.17. There was a stab wound on spleen and kidneys. The injuries found on the body of the deceased supports the version of P.W.Nos.2 and 3 that accused-Appellant assaulted the deceased by rapi on the ear, on the chest and on the stomach. Thus, the oral testimony of P.W.Nos.2 and 3 is fully supported by the medical evidence as well as the expert evidence in the form of report of the chemical analyser.

17. The medical certificate showing injuries on the P.W.No.2 Rupabai is at Exh.46. The said certificate discloses the following injuries:

(1) Incised wound over right arm 1/3 lateraly 2" x 1/2" muscle deep, bleeding marks, ovelshaped, margins clear and fine.

(2) Incised wound over forehead left side near midline verticaly directed 2 cm x 1/2 cm. x muscle deep. Bleeding marks present, painful.

(3) Incised wound over left nostril extending upto upper lip. 3 cm x 1/2 cm. Nostril cut through, bleeding marks present, margine clear and fine, tapering at ends.

P.W.No.10 Mahadeo Nagargoje who examined P.W.No.2 and issued certificate stated that the injuries are possible by a weapon like rapi.

18. In view of the discussion which is made in earlier paragraphs, it is very clear to us that the evidence of P.W.Nos.2 and 3 inspires confidence and the same will have to be accepted. It is also supported by the medical evidence. As the said witnesses are related to the deceased, we have very carefully examined the said evidence.

19. Now the question which will have to be decided is regarding the nature of offence committed by the Appellant. In so far as the injuries of P.W.No.2 are concerned the same are not grievous injuries. All the three injuries are incise wounds. Therefore, we are of the view that the learned Sessions Judge was right when he held that Section 324 of I.P.C. is attracted.

20. The Appellant has assaulted the deceased with a rapi which is a sharp and dangerous weapon. P.W.No.7 Dr. Subhash has deposed that the stab wounds on spleen and kidneys are sufficient to cause death in ordinary course of nature. P.W.No.2 has stated that when she was proceeding with the deceased, the Appellant came there with rapi in his hand and he stabbed the deceased. P.W.No.2 has also stated that the

Appellant is cobbler by caste but is not working as a cobbler. Thus, the Appellant-accused came with rapi in his hand which is not being used by him and he stabbed the deceased at three places behind the ear, on stomach and on the chest. As stated earlier, the stab injuries to the spleen and kidneys were sufficient to cause death. The rapi is dangerous and a sharp weapon. From the nature of the injuries it appears that the stab on the left side of the stomach must have been made with force as a result of which spleen and kidneys were ruptured. When the Appellant stabbed the deceased on three vital parts of the body by a rapi, he intended to cause such a bodily injury as was sufficient in ordinary course of nature to cause death. The case does not fall in any of the exceptions under Section 300 of I.P.C. We are of the view that the learned Sessions Judge was right when he convicted the Appellant for offence punishable under Section 302 of I.P.C.

21. After having gone through the entire evidence we are of the view that except for the guilt of the accused, no other possible conclusion can be drawn from the evidence on record. Under the circumstances, there is no merit in the Appeal. We confirm the sentence and conviction of the Appellant. Appeal is dismissed.

(SMT.RANJANA DESAI,J.)

(ABHAY S.OKA,J.)